

**§ 1704.22**

**12 CFR Ch. XVII (1–1–02 Edition)**

(2) OFHEO intends to collect the debt by deductions from the employee's current disposable pay account;

(3) The amount of the debt and the facts giving rise to the debt;

(4) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay), and the intention to continue the deductions until the debt and all accumulated interest are paid in full or otherwise resolved;

(5) The name, address, and telephone number of the person to whom the employee may propose a written alternative schedule for voluntary repayment, in lieu of salary offset. The employee shall include a justification for the alternative schedule in his or her proposal. If the terms of the alternative schedule are agreed upon by the employee and OFHEO, the alternative written schedule shall be signed by both the employee and OFHEO;

(6) An explanation of OFHEO's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(7) The employee's right to inspect and copy all records of OFHEO pertaining to his or her debt that are not exempt from disclosure or to receive copies of such records if he or she is unable personally to inspect the records as the result of geographical or other constraints;

(8) The name, address, and telephone number of the OFHEO employee to whom requests for access to records relating to the debt must be sent;

(9) The employee's right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt claimed or the repayment schedule *i.e.*, the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed in §1704.23; the name and address of the office to which the request for a hearing should be sent; and the name, address, and telephone number of a person whom the employee may contact concerning procedures for requesting a hearing;

(10) The filing of a request for a hearing on or before the 15th calendar day following receipt of the Notice of Intent will stay the commencement of collection proceedings and a final decision on whether a hearing will be held (if a hearing is requested) will be issued at the earliest practical date;

(11) OFHEO shall initiate certification procedures to implement a salary offset unless the employee files a request for a hearing on or before the 15th calendar day following receipt of the Notice of Intent;

(12) Any knowingly false or frivolous statement, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter LXXV, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(14) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the Federal Government shall be promptly refunded to the employee; and

(15) Proceedings with respect to the debt are governed by 5 U.S.C. 5514.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

**§ 1704.22 Review of OFHEO records related to the debt.**

(a) *Request for review.* An employee who desires to inspect or copy OFHEO records related to a debt owed by the employee to OFHEO must send a letter to the individual designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of that individual within 15 calendar days after the employee's receipt of the Notice of Intent.

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(b) *Review location and time.* In response to a timely request submitted by the employee, the employee shall be notified of the location and time when the employee may inspect and copy records related to his or her debt that are not exempt from disclosure. If the employee is unable personally to inspect such records as the result of geographical or other constraints, OFHEO shall arrange to send copies of such records to the employee.

### § 1704.23 Opportunity for a hearing where OFHEO is the creditor agency.

(a) *Request for a hearing.* (1) *Time-period for submission.* An employee who requests a hearing on the existence or amount of the debt held by OFHEO or on the salary-offset schedule proposed by OFHEO, must send such request to OFHEO. The request for a hearing must be received by OFHEO on or before the 15th calendar day following receipt by the employee of the Notice of Intent.

(2) *Failure to submit timely.* If the employee files a request for a hearing after the expiration of the 15th calendar day, OFHEO may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(3) *Contents of request.* The request for a hearing must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The employee must also specify whether he or she requests an oral hearing. If an oral hearing is requested, the employee should explain why a hearing by examination of the documents without an oral hearing would not resolve the matter.

(4) *Failure to request a hearing.* The failure of an employee to request a hearing will be considered an admission by the employee that the debt exists in the amount specified in the Notice of Intent that was provided to the employee under § 1704.21(b).

(b) *Obtaining the services of a hearing official.* (1) *Debtor is not OFHEO employee.* When the debtor is not an

OFHEO employee and OFHEO cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, OFHEO may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency.

(2) *Debtor is OFHEO employee.* When the debtor is an OFHEO employee, OFHEO may contact any agent of another agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the agency, to request a hearing official.

(c) *Procedure.* (1) *Notice of hearing.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be conducted by an examination of documents, the employee shall be notified within 30 calendar days that he or she should submit evidence and arguments in writing to the hearing official.

(2) *Oral hearing.* (i) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by an examination of the documents alone, as for example, when an issue of credibility or veracity is involved. The oral hearing need not be an adversarial adjudication and rules of evidence need not apply. Witnesses who testify in an oral hearing shall do so under oath or affirmation.

(ii) Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.